



CITY OF DURHAM | NORTH CAROLINA

Date: May 10, 2011

To: Thomas J. Bonfield, City Manager
Through: Theodore L. Voorhees, Deputy City Manager
Edward R. Venable, Engineering/Stormwater Manager
Paul Wiebke, Assistant Stormwater Manager
From: Christy Sokol, Civil Engineer IV
Subject: Citizen Matters – Mr. Brian Mulligan – 3118 Marywood Drive

Executive Summary

Mr. Brian Mulligan of 3118 Marywood Drive has requested to appear at the May 19, 2011 work session concerning his backyard.

Staff with the Stormwater Services Division has been in contact previously with Mr. Mulligan several times since December 2009 regarding his concerns, including on site meetings that took place in December 2009, September 2010, and October 2010, and letters sent by Stormwater Services staff dated February 2, 2010 and October 5, 2010. Based on staff's review of the information made available to them, it was concluded that Mr. Mulligan's concerns are a private property matter.

Recommendation

Given the past and present threats of litigation it is recommended that discussion of any recommendations be held in closed session.

Background

Mr. Mulligan was referred to Stormwater Services staff in December 2009 to respond to his drainage concerns with his backyard. In that same month staff met on site with Mr. Mulligan to observe the site conditions and to listen to Mr. Mulligan's concerns. During this meeting Mr. Mulligan was informed that the issues he raised are a private property matter. Upon receipt of further calls regarding this matter, a letter was sent to the property owners on February 2, 2010.

In September 2010 the Assistant Stormwater Division Manager received a written request from Mr. Mulligan to reinvestigate his drainage concerns. In response, staff engineers met on site with Mr. Mulligan to review his concerns. On October 5, 2010 a letter was sent to Mr. Mulligan that explained that property owners are responsible for

the ownership and maintenance of drainage systems located on their property and reaffirmed that this issue is a private property matter.

Last year Stormwater Services staff was asked to provide affidavits in a lawsuit filed by Mr. Mulligan against his neighbors, the property owners of 8 Firethorn Court. In addition, Stormwater Services staff was contacted by the attorney representing the neighbors who attempted to coordinate a settlement involving the owners of property at 3110 and 3118 Marywood Drive, and 8 Firethorn Court. The attempted settlement was not successful and summary judgment was eventually granted to Mr. Mulligan's neighbors.

Issues/Analysis

Mr. Mulligan previously indicated a desire to have the channel through his property piped. Staff estimates the cost of construction at \$30,000. However this channel is an intermittent stream regulated by the City/County Planning Department and North Carolina Department of Environment and Natural Resources - Division of Water Quality (NCDENR-DWQ). Per current standards piping of a regulatory stream for purposes other than utility or vehicular access crossings is not permitted if other feasible, less intrusive alternatives exist. Staff identified an alternative to piping the stream that would include installation of standard erosion control measures as recommended by the "NC Erosion and Sediment Control Planning and Design Manual", such as, check dams, erosion control matting, seeding and mulching. Staff estimates the cost to install these types of measures at approximately \$3,000.

Staff has reviewed all available information and has concluded that Mr. Mulligan's concerns are a private property matter. Mr. Mulligan disagrees with staff and has indicated that he intends to sue the City if he is not satisfied with the City's response to his concerns.

Alternatives

Given the past and present threats of litigation it is recommended that discussion of any alternatives be held in closed session.

Financial Impacts

There is no financial impact to the City for this item.

SDBE Summary

The Ordinance to Promote Equal Opportunity in City Contracting does not apply to this item.